



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

June 3, 2003

Mr. Gary W. Smith
City Clerk
City of Baytown
P.O. Box 424
Baytown, Texas 77522-0424

OR2003-3768

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 182109.

The Baytown Police Department (the "department") received a request for multiple categories of information related to a named police officer and to a particular case. The City of Baytown (the "city") received a request for multiple categories of information related to the same police officer named in the first request. You advise that the department has no documents responsive to items 1-3, a portion of 4, 8, 10, or 11 of the first request, and that the city has no documents responsive to items 1-3, 5, and 7 of the second request.¹ You claim that portions of the remaining requested information are excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

First, we address your claims in relation to the information responsive to the first request. Section 552.101 excepts from disclosure "information considered to be confidential by law,

¹ The Public Information Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). A governmental body must only make a good faith effort to relate a request to information which it holds. See Open Records Decision No. 561 at 8 (1990).

either constitutional, statutory, or by judicial decision.” Thus, section 552.101 encompasses information made confidential by statute. You indicate that the city is a civil service city pursuant to chapter 143 of the Local Government Code. Section 143.089 of the Local Government Code provides for the maintenance of civil service files and what may be kept in those files:

(a) The director or the director’s designee shall maintain a personnel file on each fire fighter and police officer. The personnel file must contain any letter, memorandum, or document relating to:

....

(2) any misconduct by the fire fighter or police officer if the letter, memorandum, or document is from the employing department and if the misconduct resulted in disciplinary action by the employing department *in accordance with this chapter*

....

(b) A letter, memorandum or document relating to alleged misconduct by the fire fighter or police officer may not be placed in the person’s personnel file if the employing department determines that there is insufficient evidence to substantiate the charge of misconduct.

(c) A letter, memorandum, or document relating to disciplinary action taken against the fire fighter or police officer or to alleged misconduct by the fire fighter or police officer that is placed in the person’s personnel file as provided by subsection (a)(2) shall be removed from the employee’s file if the commission finds that:

(1) the disciplinary action was taken without just cause; or

(2) the charge of misconduct was not supported by sufficient evidence. [Emphasis added.]

Information that subsections 143.089(b) and (c) prohibit from being placed in the civil service file may be maintained in the department’s internal files, as provided in section 143.089(g). This subsection provides:

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department’s use, *but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or*

police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file. [Emphasis added.]

The department may keep information in these separate, internal files for its own use. Section 143.089(g) makes records kept in the police department's internal files confidential. *Cf. City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946. (Tex. App.--Austin 1993, writ denied) (police department files).

We understand you to represent that the submitted information that is responsive to items 7 and 9 of the first request is maintained in the police department's confidential internal file. Accordingly, we conclude that these records maintained within the internal file must be withheld from the public pursuant to section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.

You claim that the submitted information that is responsive to items 4-6 is excepted from disclosure under section 552.108 of the Government Code. Section 552.108 states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required public disclosure "if release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). A governmental body that raises section 552.108 must sufficiently explain, if the responsive information does not provide an explanation on its face, how and why section 552.108 is applicable to the information. *See* Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You inform us that the information at issue pertains to a criminal investigation that is pending, and argue that release of the information would interfere with the detection, investigation, or prosecution of crime. Based on your representations, we conclude that the release of this information "would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases); Open Records Decision No. 216 at 3 (1978).

Section 552.108 does not, however, except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 at 3-4 (1976) (summarizing the types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, which must be released, you may withhold the information relating to the pending investigation under section 552.108(a)(1).

We now turn to the information responsive to the second request. Section 552.101 also encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Prior decisions of this office have found that financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy, but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. See Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983). For example, a public employee's allocation of his salary to a voluntary investment program or to optional insurance coverage that is offered by his employer is a personal investment decision and information about it is excepted from disclosure under the common-law right of privacy. See Open Records Decision No. 600 (finding personal financial information to include designation of beneficiary of employee's retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care, or dependent care). In addition, information related to an individual's mortgage payments, assets, bills, and credit history is excepted from disclosure under the common-law right to privacy. See Open Records Decision Nos. 545, 523 (1989). However, information revealing that an employee participates in a group insurance plan funded partly or wholly by the governmental body is not excepted from disclosure. See Open Records Decision No. 600 at 10. We have marked the information that is protected by common-law privacy and must be withheld under section 552.101.

Furthermore, section 552.117(2) of the Government Code excepts from public disclosure a peace officer's current and former home addresses, home telephone number, social security number, and information indicating whether the peace officer has family members, regardless of whether the peace officer complies with section 552.024 or 552.1175 of the Government Code. Thus, we agree that you must withhold the information you have marked pursuant to section 552.117.

Finally, section 552.130 excepts from public disclosure information relating to a driver's license or motor vehicle title or registration issued by an agency of this state. Thus, you must withhold the driver's license number you have marked under section 552.130 if the corresponding driver's license was issued in Texas.

In summary, you must withhold the information responsive to the first request that is maintained within the department's confidential internal file under section 552.101 in conjunction with section 143.089(g) of the Local Government Code. The remaining information responsive to the first request may be withheld under section 552.108, with the exception of basic information. We have marked the information responsive to the second request that must be withheld under section 552.101 in conjunction with common-law

privacy. You must withhold the information you have marked pursuant to section 552.117, and must withhold a Texas driver's license number under section 552.130. The remaining submitted information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Kristen Bates", written over the printed name.

Kristen Bates
Assistant Attorney General
Open Records Division

KAB/lmt

Ref: ID# 182109

Enc. Submitted documents

c: Mr. Neal Davis
DeGuerin & Dickson
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Houston, Texas 77002
(w/o enclosures)